Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2010 Quadrennial Review – Review of the	)	
Commission's Broadcast Ownership Rules	)	
And Other Rules Adopted Pursuant to	)	MB Docket No. 09-182
Section 202 of the Telecommunications	)	
Act of 1996	)	
	)	

COMMENTS OF

<u>COX MEDIA GROUP</u>

COX MEDIA GROUP

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SUMMARY

As the FCC reviews the newspaper/broadcast cross-ownership rule (the "NBCO Rule") in this proceeding, we urge it to recall the very words it used in 1975 when it noted that the Commission "is obliged to give recognition to the changes which have taken place and see to it that its rules adequately reflect the situation *as it is, not was*" (emphasis added). The media universe of the mid-1970s was vastly different and far more limited than that of today, and the FCC was faced with a much different landscape in terms of diversity and competition. Today, there are far more media outlets reaching every household every day, far more opportunities for individual consumers to add their voice to public debate, and far more sources of news and information – none of which could even have been imagined 37 years ago. The time has come to repeal the rule.

Newspapers, in particular, face daunting challenges that render the NBCO Rule especially outdated. Long the mainstay of local newsgathering activities, newspapers now are suffering through a business model transition that has seen the amount of resources that can be devoted to newsgathering decline significantly. Local news and information is being limited by the NBCO Rule because the rule prevents the efficiencies of scale that cross-ownership would bring.

Local news companies like Cox are responding to the competitive challenges presented by this new media environment and anxious to provide local news service to communities across the country. But maintaining and enhancing local news service in an age of fragmenting markets requires the most efficient operations possible. Cox and the rest of the newspaper industry are seeking to innovate and introduce more efficient operations and to jump with both feet into the digital age, including at its cross-ownership combinations in Dayton and Atlanta.

Full repeal of the NBCO Rule is a ready and necessary regulatory response to these developments. The Commission has long recognized that newspaper/broadcast combinations can increase the quality and quantity of local news by allowing local news companies to realize substantial efficiencies of scale. Repeal of the NBCO Rule would give local news companies like Cox the freedom and flexibility to structure their local newsgathering operations rationally and efficiently, improving local news service in furtherance of the Commission's localism policy and preserving the formidable newsgathering resources of local newspapers, without diminishing the diversity or competition that is thriving in every market across the country.

If not full repeal, the Commission must, at the very least, adopt significantly more far-reaching reforms than those proposed in the *NPRM*. First, it should eliminate the newspaper/radio cross-ownership rule. The radio component of the rule is not necessary to promote competition, diversity, or localism, and repeal can only strengthen both newspapers and local radio stations and lead to increased local news production in local markets.

Second, the Commission should move from a contour-based approach to a modified DMA- and Arbitron Metro-based approach for identifying newspaper/broadcast combinations that would be covered by any remaining rule. Such a rule would better reflect broadcast stations' economic markets, and the Commission should ensure that it does not disturb existing combinations and future licensee flexibility by grandfathering any combinations that become non-compliant by virtue of adoption of the revised rule.

Third, the Commission should develop clear waiver standards for newspaper/broadcast combinations in all markets. While Cox generally supports the Commission's proposal to extend presumptive waivers to newspaper/broadcast combinations in the Top 20 markets, that proposal does not go nearly far enough and leaves out smaller and mid-sized communities where newsgathering is still just as expensive, but advertising markets are smaller and efficiencies are even more important. Rather than simply seeking to finally find a large-market waiver formula that can withstand court scrutiny, the Commission should develop an objective, forward-looking waiver policy that can be applied across the board.

Cox proposes a two-part test for NBCO waivers in all markets, with the first prong covering diversity and the second covering localism. The diversity prong of the test would require an applicant to show that following the proposed combination, which may include a newspaper and any broadcast properties that would be permitted under the local ownership rules, 20 independent media voices remain in the market. For purposes of this test, independent media voices would include independently-owned daily newspapers, full power television stations, full power radio stations, cable and satellite television services (counted as one voice) and the Internet (counted as one voice). Such a test could fulfill the same transitional role for eventual elimination of the NBCO Rule. The localism prong of the waiver standard would require that following the combination, at least three independent media voices in the market other than the combining properties produce and distribute local news and information programming.

In markets where the 20 voice and three news producer tests can be met, no justification exists for prohibiting cross-ownership in today's diverse and competitive local media markets. This proposed standard would encourage diversity without the blunt force of the absolute prohibition of newspaper/broadcast cross-ownership that has been in force since 1975. It also would permit local media companies to rationally respond to the competitive pressures of today's local media markets by increasing local news production without diminishing the diversity of voices in local markets.

Finally, the Commission must reject any proposals to frustrate local news innovation and efficiency optimization by regulating Local News Service ("LNS") agreements and Shared Services Agreements ("SSAs"). Local news doesn't grow on trees; it requires revenue support and cost control. Promoting localism is simply incompatible with standing in the way of every industry innovation designed to efficiently produce the local programming communities need.

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COMMENTS OF COX MEDIA GROUP

Cox Media Group ("Cox"), by its attorneys, hereby submits these comments in the above-captioned proceeding,[1] and Cox strongly urges the Commission to go beyond its tentative proposals for reform of the newspaper/broadcast cross-ownership rule (the "NBCO Rule") and abolish the rule entirely. Enacted 37 years ago based on hopes that the rule would increase diversity, the extensive record developed by the Commission over the past fourteen years unequivocally demonstrates that the NBCO Rule today threatens diversity by weakening daily newspapers and affirmatively harms localism by prohibiting combinations that would lead to more efficient production and distribution of local news and information. The NBCO Rule harms local media markets and should be abolished.

Short of full repeal of the NBCO Rule, bolder action than that proposed in the *NPRM* is absolutely necessary to address the changes in local media markets and more effectively promote diversity and localism. In particular, the Commission should: (1) repeal the newspaper/radio cross-ownership rule, which does nothing more than artificially reduce the amount of news

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[1] *See* 2010 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules And Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Notice of Proposed Rulemaking*, MB Docket Nos. 09-182 and 07-294, FCC 11-186 (rel. Dec. 22, 2011) (the "*NPRM*").

available on the radio; (2) move from a contour-based approach to a modified DMA- and Arbitron Metro-based approach for identifying newspaper/broadcast combinations covered by the rule; (3) develop clear waiver standards for newspaper/broadcast combinations in all markets; (4) and refrain from introducing new regulations that would threaten local news service agreements or shared services agreements. Each of these changes would rationalize, modernize, and clarify the NBCO Rule and further the Commission's media ownership policies.

I. BACKGROUND AND INTRODUCTION

A. Cox's Longstanding Cross-Ownership of Newspaper and Broadcast Properties in Atlanta and Dayton Has Enhanced Localism During a Period of Ever-Expanding Diversity.

As one of America's oldest and largest independent local news and entertainment companies, Cox has a fundamental interest in ensuring that the Commission's media ownership rules provide licensees with the flexibility to meet the rapidly changing needs of its customers and its communities.[2] Cox has been delivering the news to its local communities since 1898, long before the advent of radio and television. And it has been using technological developments – first in newspaper, then radio, then television, and most recently, the Internet and social media – to improve its service to local communities for more than 114 years. Cox's history of innovation and superior service shows what companies can accomplish when they have the flexibility to succeed and are free of outmoded regulations like the NBCO Rule.

Cox began as a newspaper company when its founder, James M. Cox (later a two-term Governor of Ohio and Democratic Party Presidential nominee), purchased a Dayton, Ohio newspaper, rechristened it *The Dayton Daily News*, and transformed it from a near-bankrupt

2 Cox is one of the nation's leading multi-platform media companies, with daily and weekly newspapers in Georgia, Ohio, Florida, and Texas; 15 television stations in 11 markets; 86 radio stations in 19 metropolitan areas; and over 100 local Internet websites.

also-ran that offered no hard news into the crusading "People's Paper," a trusted source for local news and a dedicated watchdog with a strong reputation for exposing graft and corruption. Cox's Dayton experience was the blueprint for Cox's continued focus on the unique needs and interests of each of its local communities, and its commitment to being a leader in local news and public service. Governor Cox once wrote that in operating his businesses "[t]he public interest must always be paramount."[3] The company has never forgotten that.

Cox has never lost the innovating spirit that first led its founder to build *The Dayton Daily News.* Cox signed WHIO(AM) onto the air in 1935, becoming the first radio broadcaster in Dayton in an era when the Commission encouraged newspaper owners to foster and support the infant radio industry through common ownership. Four years later, Cox acquired the *Atlanta Journal* (now the *Atlanta Journal-Constitution*), and WSB(AM), which was the South's first radio station when it signed on in 1922.

When television came along, Cox brought WSB-TV to Atlanta in 1948, becoming the first television broadcaster south of Richmond. Less than a year later, Cox again was first on the air, this time back in Dayton, when WHIO-TV debuted in February 1949. With each successive wave of new technology for providing news and entertainment to local markets, Cox has sought to incorporate these new media into its core mission of service in the public interest. That tradition continues today, as Cox has sought to expand its services to local communities through Internet web sites like Valpak.com, which offers coupons for local businesses throughout the country, and Kudzu.com, which helps local consumers locate local professionals in their communities – from attorneys to plumbers.

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3 *Cox Enterprises*, THE NEW GEORGIA ENCYCLOPEDIA, http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-1904 (citing Charles Glover, JOURNEY THROUGH OUR YEARS: THE STORY OF COX ENTERPRISES, INC. (Marietta, GA: Longstreet, 1998)).

Cox now has owned both newspaper and broadcast properties in Dayton, Ohio for the past 75 years and in Atlanta for the past 70 years.[4] Cox's long experience with cross-ownership has given it first-hand experience with the positive affects that cross-ownership can have on a community and the news resources that serve it. Cox has used its newspapers and broadcast stations to provide first-rate local news and information services in Atlanta and Dayton, and its reply comments in response to the *NOI* in this proceeding provided details of how Cox maintains that high-quality service and its recent experiments in cooperative newsgathering among its cross-owned properties in those markets.[5]

As Cox demonstrated in its NOI Reply Comments, Atlanta and Dayton are no less diverse or competitive than Cox's markets where it has no cross-ownership interests.[6] Today, Atlanta is the 9th largest DMA in the country, with over 140 traditional media voices owned by more than 70 different companies. Dayton is also served by a robust array of some 70 traditional media outlets with more than 30 independent owners. The record the FCC compiled in response to the *NOI* in this proceeding demonstrates that Atlanta and Dayton are just two of many markets

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4 Cox's Dayton and Atlanta newspaper/broadcast combinations were grandfathered when the Commission adopted the NBCO Rule in 1975. *Multiple Ownership of Standard, FM & Television Broad. Stations*, Second Report and Order, 50 F.C.C.2d 1046, 1085 (1975) ("*1975 Order*"), *aff'd FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775 (1978) ("*NCCB*"). Certain of Cox's media combinations in Dayton and Atlanta are subject to pending waiver requests. *See* 2006 Quadrennial Regulatory Review – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommc'ns. Act of 1996, *Report and Order and Order on Reconsideration*, 23 FCC Rcd 2010, ¶ 78 n.257 ("*2008 Order*"), *rev'd on other grounds*, *Prometheus Radio Project v. FCC*, 652 F.3d 431 (2011). *See also* 2006 Quadrennial Regulatory Review – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommc'ns. Act of 1996, *Order*, MB Docket No. 06-121, *et al.*, DA 12-40 (rel. Jan. 12, 2012) (granting continued extension of time for parties including Cox to file amendments to pending NBCO Rule waiver requests).

5 *See* Reply Comments of Cox Enterprises, Inc., MB Docket No. 09-182 (filed July 26, 2010) ("Cox NOI Reply Comments"). A copy of the Cox NOI Reply Comments is attached for the Commission's reference.

6 *See id.* at 20-21.

that have benefitted from the superior service that cross-owned newspaper and broadcast properties have provided when given the chance.[7] Developments in local media markets since the Commission adopted the NBCO Rule in 1975 demand that the Commission eliminate the newspaper/broadcast restriction so that it can, in fact, achieve its localism and diversity goals.

B. In Today's Diverse and Highly Competitive Media Markets, the Commission Can No Longer Ignore the NBCO Rule's Negative Impact on Localism.

The NBCO Rule, which now singles out newspaper owners as the only local media owners prohibited from owning broadcast stations, was adopted in 1975 to further a "hoped for" gain in diversity.[8] Today's diverse, dynamic, and competitive local media markets, however, face a very real and concrete threat to localism that far outweighs any lingering fears that cross-ownership "might" impair the Commission's policy of promoting diversity.

Indeed, the Commission has recognized for nearly a decade that the proliferation of diverse media in local markets at least justifies liberalization of the NBCO Rule, and it has sought to slowly reform the rule by introducing waiver standards based on market size, audience reach, and financial necessity.[9] These efforts to slowly loosen the NBCO Rule, however, have been rejected by the courts (for various reasons often unrelated to the issues at hand), and

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[7] *See*, *e.g.*, Comments of Tribune Company, Debtor-in-Possession on Notice of Inquiry, MB Docket No. 09-182 at 12-67, filed July 12, 2010; Comments of Media General, Inc. on Notice of Inquiry, MB docket No, 09-182 at 10-12, filed July 12, 2010; Comments of A. H. Belo Corp., MB Docket No. 09-182 at 8-13, filed July 12, 2010; Comments of Morris Communications Company, LLC, MB Docket No. 09-182 at 8-13, filed July 12, 2010; Joint Comments of Bonneville International Corporation and the Scranton Times, L.P., MB Docket No. 09-182 (filed July 12, 2010).

[8] *See 1975 Order*, 50 F.C.C.2d at 1078.

[9] *See* 2002 Biennial Regulatory Review – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996: Cross- Ownership of Broad. Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broad. Stations in Local Markets, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 13620, 13790-814 (2003) ("*2003 Order*"); *2008 Order*, 23 FCC Rcd at 2040-57.

litigation over these reforms has prevented commencement of a transition period that should have begun with the reforms adopted by the Commission in 2003.

Over that same time period, rapid changes in technology and consumer media usage have led to a developing crisis in local newsgathering. This crisis centers on the declining resources available to newspapers and requires more urgent action than the go-slow approach proposed in the *NPRM*. Indeed, the Commission and market observers have recognized the origins of this crisis for several years now.[10] The rise of the Internet and the advent of social media have exponentially increased the number of media voices available in every market, the very way citizens communicate, and the number of opportunities audience members have for directly accessing and contributing to universally available content. These developments have accelerated the process of audience fragmentation that already was well underway due to the success of cable and satellite television.[11] Yet, many of these new media voices lack the resources or the desire to produce local news that could substitute for that provided by traditional media.[12] Thus, new media often takes audience share and its accompanying revenue from traditional media without producing local news and information content that would benefit the public.

The decreased revenues that accompany audience fragmentation and consumers' growing use of new media platforms (which generate less revenue than traditional media forms like print newspapers) make it more challenging for local media companies to devote the resources

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10 *See, e.g.*, *2008 Order* at 2015, 2024-25.

11 *See id.*; *see also* STEVE WALDMAN AND THE WORKING GROUP ON INFORMATION NEEDS OF COMMUNITIES, FCC, THE INFORMATION NEEDS OF COMMUNITIES: THE CHANGING MEDIA LANDSCAPE IN A BROADBAND AGE at 131-32 (2011) (the "Waldman Report"), *available at* http://transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf.

12 *See* Waldman Report at 130.

necessary for the production of high-quality local news on a financially sustainable basis. While every media company feels this pinch, newspapers have been hardest hit, sustaining a catastrophic drop in print audience and revenue.[13] While newspapers continue to provide a compelling product that consumers want and need, the changing usage patterns make it very difficult for newspaper companies to gain the revenues necessary to continue offering that product at current levels. Thus, as the diversity of media operating in local markets has exploded, the traditional business model that made newspapers the preeminent local newsgathering force has significantly deteriorated.

It is true that newspapers remain the largest newsgathering operations in most local communities, but the business landscape has changed in part because their print audience is no longer sufficient to support operations of this size and scope. Absent changes that permit newspapers to achieve greater economies of scale, the result has been and will continue to be a reduction in local newspaper staff and a corresponding decline in newsgathering capacity. No organizations stand ready to fill the void that is developing, and the quality and quantity of local news has begun to suffer.[14] Relief from the NBCO Rule would allow local news companies the flexibility to adapt to this changing marketplace, a flexibility that is critical if newspapers' newsgathering capacity is to survive the industry's transition to the digital future. It is time for the FCC to take action to promote local news companies' efforts to adapt to these unprecedented changes by eliminating the NBCO Rule.

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[13] *See*, *e.g.*, *id.* at 35, 262; *See* Pew Research Center's Project for Excellence in Journalism, THE STATE OF THE NEWS MEDIA 2011, Newspaper Essay, *available at* http://stateofthemedia.org/2011/newspapers-essay/#fn-5162-14 ("2011 PEJ Report").

[14] *See* Waldman Report at 262-263, 266-272.

The *NPRM* nonetheless resists repeal of the NBCO Rule and instead proposes minor changes to the rule based on misplaced concerns about diversity. The Commission's diversity concerns, however, are based on misinterpretations of key data, and they fail to recognize the dire consequences of maintaining the NBCO Rule. On the one hand, the *NPRM* underemphasizes the positive diversity impact of the Internet and social media, and on the other, it confuses newspapers' important role in local newsgathering with an economic market power and print audience reach that newspapers no longer possess. When the growing importance of new media and the declining economic fortunes of newspapers are properly weighted, elimination of the NBCO Rule emerges as the only option for giving local media companies the tools they need to develop economically sustainable models for continuing to serve their communities with diverse local news and information.

The Commission has an opportunity to address this real and present threat to localism before local communities lose the precious resource of local newspapers' newsgathering capabilities, but it must act quickly and boldly to repeal the NBCO Rule to realize that opportunity. The Commission's proposal to maintain an only slightly modified NBCO Rule is both unresponsive to changed circumstances and a threat to the future of newsgathering in local markets.

II. THE COMMISSION SHOULD REPEAL THE NBCO RULE TO PROMOTE LOCALISM AND PRESERVE DIVERSITY AND COMPETITION

Cox supports full repeal of the NBCO Rule because the rule is no longer necessary to foster competition or diversity in local media markets, and because it affirmatively harms localism by inhibiting the production of high-quality, professional local news.[15] The trends Cox

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[15] Under the Section 202(h) standard governing the Commission's review of its media ownership rules, the Commission is required to "repeal or modify any regulation it determines to be no longer in the public interest." 47 U.S.C. § 202(h). The three public interest factors the

identified in its NOI Reply Comments in 2010 of increasing competition and diversity and the increasing difficulty of dedicating the resources necessary to produce high-quality, professional local news have only intensified since that time. The continued rise of the Internet, social media, and mobile applications has created additional choice for consumers and additional competitive pressures for local media companies.

In the face of these changes, the minor NBCO revisions proposed in the *NPRM* are insufficient to promote localism and preserve existing diversity in local media markets. Moreover, these changes confirm that the NBCO Rule can no longer be sustained against First Amendment challenge as a reasonable exercise of Commission authority to achieve its ownership policies. The Commission should rethink its tentative proposal and instead repeal the NBCO Rule.

A. The NBCO Rule Is Not Necessary To Foster Viewpoint Diversity and Its Impact on Local Media Markets Now Threatens To Diminish Diversity.

The *NPRM* affirms the Commission's 2002 finding that the NBCO Rule is not necessary to further competition,[16] and it acknowledges the Commission's past findings that the rule may impede local news production and therefore is not necessary to further localism.[17] Nonetheless, the Commission tentatively proposes retaining the NBCO Rule as necessary to foster viewpoint diversity in local media markets.[18] This proposal is directly at odds with the extensive record developed by the Commission over the past decade refuting the assumption that common ownership leads to a diminution of viewpoint diversity. Moreover, the negative impact of the

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Commission has identified as supporting its media ownership regulations are competition, diversity, and localism. *See, e.g.*, *NPRM* at ¶ 10.

16 *NPRM* at ¶ 84.

17 *Id.* ¶ 84.

18 *Id.* ¶ 96.

rule on newspapers actually threatens to reduce or eliminate the viewpoint diversity newspaper companies provide today and the very same diversity the Commission is attempting to promote.

1. There Is No Support for the Commission's Unspoken Assumption That Cross-Owned Properties Reduce Diversity By Speaking With a Single Voice.

The Commission's primary support for concluding that viewpoint diversity justifies retention of the NBCO Rule is that Americans continue to rely most heavily on television stations and newspapers for local news.[19] Even if true, however, that fact alone cannot support retention of the NBCO Rule because the Commission has no evidence that commonly owned broadcast stations and newspapers speak with a single editorial voice. In fact, the most recent research on this subject, which was conducted by David Pritchard and cited in Cox's NOI Reply Comments, reaches the opposite conclusion.[20] Dr. Pritchard's study demonstrates that cross-owned properties are just as likely as non cross-owned properties to present conflicting and antagonistic viewpoints.

The Pritchard Study reviewed coverage of the 2004 presidential campaign by Cox's newspaper/broadcast combination in Dayton, Ohio and by other cross-owned properties in Milwaukee and Chicago. Dr. Pritchard found that "it was difficult, if not impossible, to distinguish between cross-owned and similar non-cross-owned media properties merely by looking at the slant of their coverage of the presidential campaign."[21] The Pritchard study also presented a survey of the available studies on the theory that commonly-owned media outlets speak with a single voice and concluded that "[i]n general, studies that have directly tested the

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19 *Id.* ¶ 96-97.

20 *See* David Pritchard, et al., *One Owner, One Voice? Testing a Central Premise of the Newspaper-Broadcast Cross-Ownership Policy*, 13 COMM. L. & POL'Y 1 (2008) (the "2008 Pritchard Study"). *See also* Cox NOI Reply Comments at 22-25.

21 2008 Pritchard Study at 22.

one-owner, one-voice premise have failed to find support for it in the context of newspaper-broadcast cross-ownership."[22] The *NPRM* neither cites nor responds to Dr. Pritchard's findings.

While the conjecture that commonly-owned properties would result in a decrease in diversity may have been an arguable hypothesis in past periodic ownership reviews, it has not been borne out by the data, and the Commission cites none to support it.[23] A better conjecture given the research findings available to the Commission would be that common owners of newspapers and broadcast properties have a strong incentive to vary their editorial approach in order to reach the largest possible number of viewers, listeners, and readers.

In addition to this business incentive, Cox learned long ago that news consumers in local markets demand credibility and integrity from their local news outlets. The only way to provide news with the level of integrity local residents demand is to permit local editors to exercise independent editorial control of news product. That is why, as Cox experiments with cooperative newsgathering in its Atlanta and Dayton cross-ownership markets, it seeks to guard and preserve the editorial independence of each of its cross-owned properties.[24] These incentives go a long way toward explaining why the Pritchard study shows that cross-owned properties do not speak with a single voice. News companies have no incentive to homogenize their properties' respective voices, and news consumers wouldn't stand for it if they did.

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22 *Id.* at 16.

23 The Pritchard Study confirmed results obtained in a previous study conducted by Dr. Pritchard for the FCC during its 2002 Biennial Media Ownership Review. See David Pritchard, Media Ownership Working Group Study No. 2, *Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (Sept. 2002). The Commission rejected Dr. Pritchard's results as probative of the diversity issue because that study did not include a control group to provide a baseline for comparing the results for the cross-owned properties. *See 2003 Order*, 18 FCC Rcd at 13629-30. The 2008 Pritchard Study current study utilized a control group for a baseline comparison, and the results were the same.

24 Cox NOI Reply Comments at 12.

In any case, without evidence that cross-owned properties speak with a unified voice, the Commission has no basis for concluding that cross-ownership restricts viewpoint diversity in local media markets. Without that justification, the NBCO Rule must be repealed.

2. The Audience Reach of Print Newspapers No Longer Justifies the NBCO Rule.

The Commission's tentative conclusion on viewpoint diversity also misinterprets newspapers' impact on local media markets. Newspapers continue to be critical to the local news ecosystem and they continue to produce a valuable product that consumer want and need. At the same time, however, changing consumer usage patterns have eroded the audience share of print newspapers, and that erosion is not being fully replaced by online news readership. The result is that the newspapers' news audience share no longer justifies singling out newspaper owners as the one class of local media participants prohibited from owning broadcast stations.

The *NPRM* emphasizes that 37 percent of Americans continue to read newspapers daily,[25] but fails to recognize that the newsgathering operations of local newspapers were designed to serve a much larger audience. The reality is that the shrinking audience share of newspapers cannot support newspaper operations on their current scale and scope absent opportunities to achieve new efficiencies or realize new revenues.

Indeed, the studies cited by the Commission contradict the Commission's conclusion that newspapers remain preeminent. The Pew News Usage Study showed that newspapers' share of local audiences has decreased from 43 percent to 37 percent in just the past four years.[26] The percentage of consumers in local markets that continue to read print versions of local newspapers

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[25] *NPRM* at ¶ 96 (citing 2011 PEJ Report at Newspaper Essay). *See also* Pew Research Center for the People and the Press, AMERICANS SPENDING MORE TIME FOLLOWING THE NEWS (Sept. 12, 2010) ("Pew News Usage Study"), *available at* http://www.people-press.org/2010/09/12/americans-spending-more-time-following-the-news/.

[26] *See* Pew News Usage Study at 13, 18.

has dwindled to 31 percent, and online readership is replacing only about half the readers lost to print editions.[27] Thus, the data shows that paying print subscribers are converting to primarily non-paying online readers or abandoning newspapers altogether at an accelerating rate.[28]

As a result of this drop, newspapers' share of audience attention in local media markets is no longer high enough to justify a special prohibition on common ownership of newspaper and broadcast properties.[29] Moreover, Pew's 37 audience reach percent figure includes readers who access newspaper content online. Thus, the data does not suggest that newspapers are gaining a disproportionate share of the online news audience, irrespective of the oft-cited claim that newspaper websites are among the most popular on the Internet.[30] And perhaps most

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[27] The Commission's reliance on studies showing that traditional media entities, and particularly newspapers, "dominate" the market for online local news is misplaced. *See NPRM* at para. 97 (citing Federal Communications Commission, Media Ownership Study No. 6). Study No. 6 and others like it seek to identify local news websites that are not affiliated with traditional media and seek to estimate online audience share based on Internet traffic data. Both of these pursuits are irrelevant to the Commission's tasks of preserving diversity and promoting localism. Even assuming that newspapers "dominate" the market for local news on the Internet, that success is not providing enough viewers to replace what newspapers are losing in print subscriptions and lost advertising. As noted in the Waldman Report (at 17), "[f]rom 2005 to 2009, newspapers' online traffic skyrocketed—from 43.7 million unique monthly users to 70 million, from 1.6 billion monthly page views to 3 billion page views. But in financial terms, that growth was shockingly meaningless. During that period, online advertising revenue—for the entire newspaper industry— grew $716 million, while the print advertising side of the business lost $22.6 billion." The rise of Internet is having an undeniable negative impact on the present and future of the newspaper industry.

[28] *See* Pew News Usage Study at 18. *See also* Brian Stelter, *A Harsh Reality for Newspapers*, THE NEW YORK TIMES, Mar. 5, 2012 (noting that new digital audiences are producing only one dollar in new revenue for every seven dollars in print advertising losses), *available at* http://mediadecoder. blogs.nytimes.com/2012/03/05/a- harsh-reality-for-newspapers/.

[29] *See id.* (showing that the number of Americans turning to newspapers to get their news is now only slightly higher than those turning to the Internet or those tuning into radio, which both registered 34 percent).

[30] *See id.* While the 34 percent audience figure for the Internet includes people reading local newspaper stories, most of those customers are not paying for the content, so they are not supporting its production in any meaningful way.

significantly, print newspapers now trail television, radio, and online sources in the amount of time each day news consumers spend using each respective media.[31]

The rapidly declining news audience share of newspapers in local media markets significantly undermines the Commission's key rationale for prohibiting newspapers from combining with broadcast stations. Newspapers remain crucial to local media markets and localism, but they are no longer in a special category of pervasiveness that could justify the NBCO Rule. The Commission permits television stations to combine with radio stations, regardless of whether a radio station might be the only News/Talk formatted station in a market, and any broadcast station can own an unlimited number of Internet news sites. Given the audience trends that the Commission itself cites, continuing to single out newspaper/broadcast combinations as forbidden is arbitrary and unsupported by the facts.

The world has changed since 1975 when television stations and newspapers were the undisputed news kings of local media markets. Today, these markets have become far more diverse, consumers are taking full advantage of that diversity, and the justification for prohibiting newspaper/broadcast combinations has disappeared. Newspapers are making every effort to make the transition to the digital future, but the NBCO Rule stands in the way of realizing the efficiencies of scale and of new revenue opportunities that would permit newspapers to continue playing their traditional central role in local newsgathering activities.

31 *See id.* at 17. Even presuming half of Internet news usage time is spent reading newspapers, the total average time spent by consumers reading news provided by newspapers is much more comparable to radio and non-newspaper Internet sources than it is to TV.

B. The NBCO Rule Affirmatively Harms Localism by Prohibiting Beneficial Combinations That Would Sustain and Improve Local Newsgathering.

The decline of the newspapers' print audience threatens to amplify the damage to newsgathering in local media markets that the Commission has acknowledged results from the NBCO Rule. The *NPRM* recognizes that, in the *2003 Order*, the Commission found that the NBCO rule "is not necessary to promote broadcasters' provision of local news and information programming and . . . the rule actually works to inhibit such programming,"[32] and that, in 2008, the Commission reaffirmed that "cross-ownership can promote localism by increasing the amount of news and information transmitted by the co-owned outlets."[33] Yet, the Commission previously has accepted this damage to localism in exchange for the perceived diversity gains achieved by the rule.[34]

Newspapers' declining print audience, however, threatens far more substantial damage to localism than the Commission has previously recognized. The data shows that newspapers are shrinking to fit the size of their paying audience, and there is no other business on the horizon ready to assume the role they are slowly being forced to vacate.[35] Newspaper circulation has declined every quarter since 2003, and revenues declined another 6 percent in 2010, following a

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32 *2003 Order*, 18 FCC Rcd at 13753-60.

33 *2008 Order*, 23 FCC Rcd at 2038.

34 The *NPRM* (at para. 98) seeks comment on whether Federal Communications Commission Media Ownership Study No. 4 ("Study No. 4") casts doubt on the Commission's previous findings that cross-owned stations air more local news. Study No. 4 finds that the total TV news output of all stations in markets with newspaper/television combinations appear to be the same size or smaller than markets that do not have a newspaper/broadcast cross-ownership. On peer review, the author admits that the study's model cannot demonstrate that cross-ownership is the cause of this apparent market-level phenomenon and that it might just as easily be caused by the "idiosyncratic differences" among the stations and cross-ownership local markets studied. *See* Response to Peer Review at 5. The urgency of protecting and promoting localism in the current economic environment and previous studies that found different results counsel strongly against making policy judgments based on the equivocal results of Study No. 4.

35 *See* Waldman Report at 262.

catastrophic 26 percent drop in 2009.[36] Newspapers now employ 26 percent fewer employees than they did in 2000.[37] Annual reporting and editorial spending by newspapers dropped $1.6 billion between 2006 and 2009 and there is no reason to expect a rebound.[38] Less local news is being produced today than last year or the many years before. Newspapers are undergoing substantial changes in response to market realities. This is not a large market problem; it is a nationwide problem. By prohibiting newspapers from realizing the efficiencies of scale that would come with cross ownership, the NBCO Rule must bear its share of the responsibility for this decline.

As the newspaper business shrinks to accommodate the market, its ability to continue as the main engine of local news content shrinks with it. In worrying about a loss of diversity by permitting newspaper/broadcast cross-ownership, the Commission is still fighting the last war. The coming battle is over preserving the important public services that newspapers provide in an era of diffused audience attention and uncertain revenue models.

As Cox explained in its NOI Reply Comments, local newsgathering is an extremely expensive, time-intensive process.[39] To continue producing anything like the current amount of high-quality local news they currently provide, newspaper owners like Cox must be permitted to recognize the maximum possible efficiencies of scale and cooperative operation possible. As long as the NBCO Rule remains in effect, such efficiencies will be impossible to fully realize. Permitting broadcasters and newspapers the flexibility to meet the challenges posed by the

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36 *See* Pew Research Center's Project for Excellence in Journalism, THE STATE OF THE NEWS MEDIA 2011, Newspaper Essay, *available at* http://stateofthemedia.org/2011/newspapers-essay/#fn-5162-14.

37 *See id.*

38 *See* Waldman Report at 35.

39 Cox NOI Reply Comments at 10-11.

marketplace through common ownership need not and will not result in any significant loss of diversity of viewpoint. Refusing to provide such flexibility, however, will most certainly result in the continued erosion of the amount of local news that traditional media companies can economically produce with resulting strong negative impact on the Commission's localism policy.

C. The Commission's Suggestion That Local News Service Agreements May Create Attributable Interests Would Further Impair Local News Companies' Ability To Serve Their Audiences.

The *NPRM*'s suggestion that it may decide that local news services agreements ("LNS Agreements") and Shared Services Agreements ("SSAs") create attributable interests in local media properties confirms that the Commission is not properly weighting the substantial threats to localism in today's media markets.[40] SSAs and LNS Agreements come in many different forms, but their basic common feature is that they permit local media properties to share duplicative resources in order to provide service to the public more efficiently and effectively. At a time when the Commission should be providing traditional media with more flexibility to meet modern competitive challenges, regulating LNS Agreements and SSAs would be a giant step backwards.

LNS Agreements and SSAs lead to more and better local news services and thus promote localism. They typically supplement or expand existing news operations, so if they have any impact on diversity, that impact is positive.[41] Indeed, in many cases, LNS Agreements and SSAs

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[40] *NPRM* at 204-208.

[41] *See* Letter from Erin L. Dozier, Senior Vice President and Deputy General Counsel, Legal and Regulatory Affairs, National Association of Broadcasters, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket Nos. 09-182 and 10-71 (filed Dec. 5, 2011) (citing, *inter alia*, Michael G. Baumann and Kent W. Mikkelsen, Economists Incorporated, "Effect of Common Ownership or Operation on Television News Carriage: An Update" (filed as Attachment A, NAB Reply Comments, MB Docket No. 06-121, at 6-7 (Nov. 1, 2007); Jeffrey A. Eisenach and Kevin W. Caves, "The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting"

result in the addition of newscasts on television stations that did not previously have them or in the significant improvement of the newsgathering capabilities of the parties. Cox's properties in Atlanta and Palm Beach, Florida are parties to LNS Agreements that have worked very effectively to increase the dissemination of local news.

Finding that these agreements create attributable interests could essentially eliminate them in most markets by creating non-compliant duopoly or cross-ownership relationships. The parties seeking this result do so in the name of increasing news content and news jobs, but in fact such a rule would have the opposite effect. Making LNS Agreements and SSAs attributable would decrease news output and decrease news jobs. Just as the Commission should eliminate the localism-killing NBCO Rule, it should dismiss any suggestion that LNS Agreements and SSAs create attributable interests.

D. The NBCO Rule Can No Longer Survive First Amendment Scrutiny Due to Changes in Local Media Markets.

In the past, the courts have upheld the NBCO Rule against First Amendment challenges, finding it to be rationally related to furthering the Commission's stated policy goals of fostering competition, diversity and localism in broadcasting.[42] Now that the Commission has recognized that the rule does not promote competition or localism in local media markets, and the record in this proceeding already demonstrates that the rule does not promote diversity, the NBCO Rule can no longer pass muster under even the most deferential standard of review.

Moreover, the explosion of new media voices in every market that has taken place since the NBCO Rule was adopted calls into serious question the "spectrum scarcity" rationale

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(June 2011) (filed as Attachment A to the Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves (June 27, 2011), which was attached as Appendix A to NAB's reply comments in MB Docket No. 10-71)).

[42] *See, e.g.*, *Prometheus Radio Project v. FCC*, 373 F.3d 372, 382 (3d Cir. 2004) (citing *Nat'l Citizens Committee for Broad.*, 436 U.S. 775, 799 (1978)).

underpinning the NBCO Rule.[43] The scarcity doctrine was created to justify regulating broadcasters under the theory that there are more potential speakers desiring broadcast licenses than there are channels for broadcasting. The FCC abandoned that rationale for the NBCO Rule many years ago,[44] but further reliance on it to justify discrimination against newspaper owners in broadcast licensing matters is particularly unsustainable now that the Internet and social media provide a virtually unlimited number of speakers access to every local market. In this environment, singling out newspaper owners as the one and only class of Americans who are necessarily precluded from owning a broadcast license should trigger the heightened scrutiny typically applied in cases where the government makes choices among favored and disfavored classes of speakers.[45] Under that more searching review, the NBCO Rule surely fails to withstand Constitutional scrutiny.

III. IF THE FCC RETAINS THE NBCO RULE, LOCAL MARKET CONDITIONS DEMAND THAT THE RULE BE SUBSTANTIALLY REFORMED

If the Commission determines that the record built up over the last nearly two decades does not support repeal of the NBCO Rule, market developments since 1975 and the changing needs of local markets demand that the Commission make significant changes to provide local media businesses like Cox with the flexibility to respond to those changes and maintain the local

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[43] *See Red Lion Broad. Co. v. FCC,* 395 U.S. 367, 390 (1969).

[44] *See Tribune Co. v. FCC* , 133 F.3d 61, 68 (noting the presence – more than a decade ago – of "persuasive evidence that the scarcity rationale is no longer tenable"); *Comm'n Proceeding Regarding Personal Attack and Political Editorial Rules*, Public Notice, Joint Statement of Commissioners Powell and Furchtgott-Roth, 13 FCC Rcd 21901, 21940 (1998) (noting that "the Commission has unequivocally repudiated spectrum scarcity as a factual matter"); *Syracuse Peace Council*, Memorandum Opinion and Order, 2 FCC Rcd 5043, 5053 (¶ 65) (1987) (concluding – more than two decades ago – that "the scarcity rationale . . . no longer justifies a different standard of First Amendment review for the electronic press"); *see also* John W. Berresford, *The Scarcity Rationale for Regulating Traditional Broadcasting: An Idea Whose Time Has Passed* (Mar. 2005) (FCC Media Bureau Staff Research Paper), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-257534A1.pdf.

[45] *See, e.g., Ark. Writers' Project v. Ragland,* 481 U.S. 221, 231 (1987).

services they provide. While Cox supports the Commission's efforts to liberalize the NBCO Rule, the large market waiver standards proposed by the Commission are wholly insufficient to account for the seismic changes in local media markets over the past 37 years. These changes justify much more fundamental changes in the NBCO Rule.

Specifically, the Commission should (1) abolish the newspaper/radio cross-ownership rule in all markets; (2) replace its current contour-based trigger for applying the NBCO Rule with a modified DMA-based (and, if the Commission retains the newspaper/radio cross-ownership rule, a modified Arbitron Metro-based) rule; and (3) adopt uniform waiver standards for the NBCO Rule that are simple to apply and applicable to all markets.

A. The Commission Should Eliminate the Ban on Newspaper/Radio Cross-Ownership.

The Commission should reverse its tentative proposal and abolish the newspaper/radio cross-ownership rule in its entirety.[46] The Commission's tentative conclusion that "radio stations are not the primary outlets that contribute to local viewpoint diversity" has been recognized by the Commission for many years,[47] so the rule cannot be supported as necessary to promote the Commission's diversity policy.[48] And, the Commission has never suggested that the rule is necessary to promote the public's interest in competition or localism.[49] To the contrary, the Commission has explicitly recognized that radio advertising constitutes its own product market

[46] *NPRM* at ¶ 112.

[47] *See, e.g.*, *2008 Order*, 23 FCC Rcd at 2042-43 (declining to include radio stations among the class of "Major Media Voices" for purposes of the NBCO Rule presumptive waiver standards).

[48] *NPRM* at ¶ 112. Indeed, the continuing prohibition on newspaper/radio cross-ownership may be the most backward-looking element of the anachronistic NBCO Rule. Even in 1975, the FCC recognized that local radio stations were neither a chief source of news for media consumers nor a significant economic force in local media markets. *1975 Order*, 50 FCC 2d at 1057-58, 1065-66.

[49] *See 2008 Order* 23 FCC Rcd at 2052 (recognizing that radio is "not as influential a voice as television" and that proposed "newspaper/radio combinations [are] generally less likely to raise concentration concerns than . . . newspaper/television combinations).

for antitrust analysis; that radio is not a substitute for television or newspapers; and that radio stations do not make substantial contributions to original local news reporting.[50] Moreover, none of the justifications the Commission offered for maintaining the NBCO Rule apply to radio at all. Thus, the newspaper/radio rule is a prohibition without a public interest rationale, and cannot withstand the review mandated by Congress through Section 202(h).

Abolition of the newspaper/radio cross-ownership prohibition would provide both newspapers and radio stations an opportunity to revitalize local news on radio. While the Pew News Media Usage Study shows that significant numbers of local residents turn to radio for news,[51] evidence also suggests that much of that news is not locally gathered or produced.[52] Thus, radio news has a ready-made audience for local news, and daily newspapers have the newsgathering resources to provide high-quality content. Cox's experience with cooperative newsgathering at its cross-owned properties in Dayton has been highly successful.[53] Cox's experience, as well as the similar experiences cited by other parties in this proceeding provides a model that many other newspaper companies are likely to replicate.[54] The result of abolition of the newspaper/radio prohibition therefore will not harm viewpoint diversity and indeed is very likely to be a source of revitalization of local news on radio stations and a new way for audience-starved newspapers to reach the public. This likely improvement in local radio and its positive impact on the Commission's localism policy is more than enough to justify eliminating the newspaper/radio prohibition, which, as it stands, has no public interest justification.

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50 *NPRM* at ¶¶ 123, 127.

51 *See* Pew News Usage Study at 18.

52 Waldman Report at 62-66.

53 *See* Cox NOI Reply Comments at 12-15.

54 *See* Comments of Morris Communications Company, LLC on the FCC's May 25, 2010 Notice of Inquiry, MB Docket No. 09-182, at 3-15 (filed July 12, 2010); Joint Comments of

The result of repeal should be that local newspapers' acquisition of radio stations is limited only by the Commission's local radio ownership rules.[55] The Commission's conclusion that local radio stations are not today a major source of viewpoint diversity, localism, or concern over potential concentration issues means that there is no justification for limiting newspaper ownership of radio stations any more stringently than the Commission limits radio station ownership by any other non-broadcaster.[56] Indeed, to the extent that newspaper/radio combinations provide a successful business model that is economically beneficial to daily newspapers, permitting newspaper companies to maximize the efficiencies of scale that come along with multiple radio ownership should be an affirmative benefit to the Commission's viewpoint diversity and localism policies.

B. If the Commission Retains the NBCO Rule, It Should Replace the Contour-Based Trigger With a Market-Based Rule.

The Commission should transition from its pure contour-based test for determining whether to trigger the NBCO Rule to a market-based approach for both newspaper/television and newspaper/radio combinations. This change would result in a rule that would more accurately reflect the economic and audience markets of stations and newspapers.

1. The Commission Should Adopt a Modified Version of Its Proposal To Use Television DMAs To Evaluate Newspaper/Television Combinations.

In the event the Commission retains the NBCO Rule for television stations, Cox urges the Commission to amend the rule to utilize DMAs, which generally define TV broadcasters'

Bonneville International Corporation and the Scranton Times, L.P., MB Docket No. 09-182 (filed July 12, 2010).

55 47 C.F.R. § 73.3555(a). Cox agrees with the Commission's findings regarding the relative substitutability of television and radio stations and the market position of each media, and thus Cox supports the Commission's proposal to eliminate the radio/television cross ownership rule. *See NPRM* at ¶ 119.

56 *See, e.g.*, *NPRM* ¶¶ 112, 123, 124, 127.

economic market for cable carriage and advertising purposes and provide a reasonable proxy in most cases for the area in which a broadcasters' market is likely to overlap that of a local daily newspaper.[57]

At the same time, however, the Commission should ensure that the switch to a DMA-based rule does not result in the rule being triggered to cover common ownership of newspapers and television stations that do not, in fact, serve the same audiences and economic markets. This potential problem can be solved by limiting the rule so that it is triggered only if (1) the newspaper and television station are located in the same DMA; (2) the newspaper's circulation exceeds 5 percent of the households in the television station's community of license; and (3) the digital equivalent of the television station's former analog Grade A service contour encompasses the newspaper's community of publication.[58] This standard is similar to that employed to determine the number of media voices in the market for determining compliance with the radio/television cross ownership rule. In that case, a daily newspaper is considered to be within a television station's market only if it is published at least four days per week in the dominant language of the market and has circulation exceeding 5 percent of the households in the television station's DMA.[59] By slightly modifying this standard to measure the newspaper's circulation within the television station's home community, the Commission would ensure that newspapers and television stations serving distinct portions of large DMAs would not be

[57] *NPRM* at ¶¶ 99-100.

[58] Cox recognizes that the Commission has not yet recognized a digital equivalent for stations' analog Grade A service contour. *See*, *e.g.*, *NPRM* at ¶ 135. Nonetheless, specification of a digital Grade A contour in the NBCO Rule context (should the Commission retain the rule) is necessary to ensure that any revised rule does not prohibit combinations of properties that do not even serve the same communities, and involves only straightforward engineering calculations.

[59] 47 C.F.R. § 73.3555(c)(3)(iii).

captured by the DMA-based NBCO Rule. And, continued use of contour overlap will further ensure that the properties are serving the same audience.

Cox also agrees with the Commission's proposal to grandfather existing combinations that were not previously covered by the contour-based rule but that would be covered by any DMA-based rule.[60] The Commission's observation that forced divestiture works a hardship on licensees is particularly applicable in this context because the depressed state of the newspaper industry makes it very unlikely that a newspaper could be divested for any price remotely approaching its value. Forcing divestiture could very likely lead to the newspaper's demise. Indeed, given the long-term outlook for the newspaper industry, the Commission should permit *any* future sale in tandem of newspaper/television combinations, including those that become subject to the NBCO Rule due to the shift to using DMAs to determine compliance.

2. Consistent With Its New Market-Based Approach, the Commission Should Use Arbitron Metro Markets To Evaluate Newspaper/Radio Combinations.

If the Commission elects to retain the newspaper/radio prohibition in any form, it should dispense with its contour only-based trigger for identifying newspaper/radio combinations that are subject to the rule and instead use a modified Arbitron Metro markets-based approach. As the Commission has recognized, the economic market and presumed audience area for most radio stations is defined by its Arbitron Metro market.[61] Replacing the contour-based standard with an Arbitron-based standard would be consistent with the Commission's 2002 decision to use Arbitron Metro markets to determine compliance with the local radio ownership rule.[62] Arbitron markets also tend to be smaller that DMAs, making it even less likely that commonly

60 *NPRM* at ¶ 100.

61 *Id.* at ¶ 114.

62 *2003 Order*, 18 FCC Rcd 13724-26.

owned newspapers and radio stations will be located in the same Arbitron market but have wholly different audience areas. Nonetheless, the Commission should employ the same 5 percent circulation and contour overlap limitations proposed above for determining when commonly-owned newspapers and radio stations are in the same market for NBCO purposes (*i.e.*, 1 mv/m for FM and 2mv/m for AM).

As the Commission recognizes, not all radio stations are located in an Arbitron Metro market.[63] In those cases, the next best proxy for the stations economic market and audience area is likely the station's service contour. The Commission should consider limited continued use of it contour-based standard only to determine NBCO Rule compliance for radio stations located outside Arbitron Metro markets.

As with its shift to DMAs, the Commission should grandfather combinations that become subject to the NBCO Rule due to the change to Arbitron Metro markets. Again, due to the generally smaller size of these markets, the new rule is less likely to capture commonly-owned properties that were in compliance with the contour-based rule. At the same time, the same sound Commission policy disfavoring divestitures would apply equally to radio/newspaper combinations as it does to television/newspaper combos. Thus, the Commission should permanently grandfather previously compliant radio/newspaper combinations and make those combinations and all other newspaper/radio combinations freely transferable in the future.

[63] *NPRM* at ¶ 114.

C. The Commission Should Provide Presumptive Waiver Relief Outside the Top 20 Markets by Adopting a Uniform NBCO Waiver Standard Applicable to All Markets.

Cox supports the Commission's proposal to provide presumptive waiver relief for newspaper/broadcast combinations in the Top 20 markets as a good first step.[64] However, given the thriving competition and diversity in local media markets and the urgency of allowing traditional media markets the flexibility to meet that competition, those proposals must be only a start. If the Commission elects to retain the NBCO Rule in any form, the record the agency has compiled at a minimum requires the Commission to permit waiver combinations more freedom to participate in local media markets now. It should also begin to immediately develop plans to continue rolling back the rule remnants in future proceedings.

1. The Commission Should Permit Waiver Combinations To Participate Fully in Local Media Markets.

The Commission's proposal apparently would permit Top 20 market waiver combinations to own only one newspaper and one television or radio station.[65] This standard is far too restrictive to properly account for present levels of competition and diversity or for the needs of local media businesses and local communities. It also strongly discourages local media companies from making the investments in newspapers that may become necessary to ensure their survival as important local newsgathering operations. Newspaper ownership should not be limited only to broadcasters that own a single broadcast property in a market. Particularly in radio, ownership of a single local station, with or without a newspaper, is not likely to create the revenue necessary to support stand-alone news operations.

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64 *Id.* at ¶ 102.

65 *Id.*

To ensure that the waiver standard leads to efficient combinations and increased local newsgathering, the rule should be that a Top 20 market waiver of the NBCO Rule permits the licensee to own whatever media properties would be permitted by the local television and radio ownership rules absent the NBCO Rule. This would encourage local media companies with multiple local broadcast stations to invest in newspapers, which would help to preserve newspaper companies' local newsgathering capabilities. The Commission's rules already limit the number of television and radio stations that one broadcaster may own in a market, and those rules have been developed over many years. Licensees operating in the most diverse and competitive markets in the country should be free to structure their operations to maximize their service to their communities and should not be artificially constrained from realizing the efficiencies of scale that come from common ownership of local broadcast properties merely because one of their properties is a local newspaper. Instead, once the Commission determines that a market is sufficiently diverse and competitive to support a newspaper/broadcast combination, the local broadcast ownership rules should be the applicable limits for broadcast ownership.

2. The Commission Should Commit To Future Presumptive Waiver Relief in Smaller Markets and Adopt Objective Waiver standards for Markets of All Sizes.

The Commission has unsuccessfully tried to provide cross-ownership relief to large-market combinations since its *2003 Ownership Order*. As described herein and as demonstrated by the record in this proceeding and previous periodic reviews, that relief is entirely warranted and long overdue. Even since 2003, however, the competition and diversity in local markets has multiplied such that large-market waiver relief is not sufficient to properly account for the needs of local communities. Moreover, the threats to local newsgathering organizations and the corresponding impact on the Commission's localism policy have only become more acute over the last nine years. Rather than simply seeking to finally find a large-market waiver formula that can withstand court scrutiny, the Commission should develop an objective, forward-looking waiver standard that permits any and all local markets to enjoy the full benefits resulting from newspaper/broadcast cross-ownership. That standard should be based on the same considerations that originally led to the adoption of the NBCO Rule in 1975, namely the encouragement of diversity in the service of promoting localism.

Cox proposes a two-part test for NBCO waivers in all markets, with the first prong covering diversity and the second covering localism. First, the diversity prong of the test would require a showing that following the proposed combination, which may include a newspaper and any broadcast properties that would be permitted under the local ownership rules, 20 independent media voices remain in the market. For purposes of this test, independent media voices would include independently-owned daily newspapers, full power television stations, full power radio stations, cable and satellite television services (counted as one voice) and the Internet (counted as one voice). This standard is similar to that employed for radio/television cross-ownership for many years, and the Commission has affirmed that standard repeatedly and has not observed any adverse impacts on competition, localism, or diversity stemming from that standard.

Second, the localism prong of the waiver standard would require that following the combination, at least three independent media voices in the market other than the combining properties produce and distribute local news and information programming.

In markets where the 20 voice and three news producer tests can be met, no justification exists for prohibiting cross-ownership in today's diverse and competitive local media markets. This proposed test would fulfill the purposes of the NBCO Rule without the blunt force of the absolute prohibition of newspaper/broadcast cross-ownership that has been in force since 1975.

It also would permit local media companies to rationally respond to the competitive pressures of today's local media markets by increasing local news production without diminishing the diversity of voices that the Commission continues to rely upon in defense of the NBCO Rule. Finally, this proposal would give the Commission time to study the effects of cross-ownership over time as additional combinations form to fully determine the effects of cross-ownership on local news production. The record strongly supports the proposition that the results will be positive and that localism will thrive.

IV. CONCLUSION

The Commission's responsibility to safeguard localism, and, specifically, to ensure that local media companies continue to have the opportunity to provide high quality, local news and information to communities across America, outweighs any legitimate concerns raised in the *NPRM* regarding repeal or substantial reform of the NBCO Rule. This 37-year old rule is unjustifiable under the Commission's ownership policies and works substantial harms on local readers, viewers, and listeners. Accordingly, the Commission should repeal the NBCO Rule, or, failing full repeal, should adopt the reforms described herein.

Respectfully submitted,

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March 5, 2012

ATTACHMENT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	
Review of the Commission's Broadcast	)	MB Docket No. 09-182
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF COX ENTERPRISES, INC.

COX ENTERPRISES, INC.

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July 26, 2010

SUMMARY

Cox supports complete repeal of the 35-year old newspaper/broadcast cross-ownership rule (the "NBCO Rule" or the "Rule"). The NBCO Rule always has rested primarily on the conjecture that common ownership of newspaper and broadcast properties will diminish the diversity of media voices in local communities. No hard evidence has ever demonstrated that the NBCO Rule actually achieves this "hoped for" gain in diversity. These reply comments include additional data from Cox's experience that augment a massive record compiled in this proceeding and over five other proceedings in the past 12 years. That record demonstrates the ways in which the NBCO Rule actually damages the public interest.

In Cox's experience, the Rule impairs production of high-quality local news and information by interfering with the efficient production and distribution of local news, which is newspapers' and local broadcasters' most vital public service. At the same time, the Rule does nothing to further either diversity or competition. Given the Rule's concrete and substantial public interest costs, as well as this Commission's commitment to formulating policy based on hard data and real-world facts, the NBCO Rule can no longer be retained based on mere "hoped for" gains in diversity.

The Commission's main focus in this proceeding thus should be on fostering localism and clearing away regulatory obstacles to the production of high-quality local, professional journalism in communities large and small across the country. Cox's experience with cooperative newsgathering among its television, radio, and newspaper properties shows great promise as a way of more efficiently delivering faster, broader, and deeper news coverage to its communities than its properties can provide individually. The Rule stands as a potential obstacle to companies wishing to experiment with cooperative newsgathering either through common

ownership or through other resource sharing arrangements. Today's vibrantly diverse and fiercely competitive local media markets offer no justification for prohibiting common ownership arrangements that will improve important services to the public without compromising consumer choice. Accordingly, the Commission must promptly start a rulemaking proceeding proposing elimination of the NBCO Rule.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	
Review of the Commission's Broadcast	)	MB Docket No. 09-182
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF COX ENTERPRISES, INC.

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits these reply comments in the above-captioned proceeding.[1] Cox supports those commenters seeking complete repeal of the 35-year old newspaper/broadcast cross-ownership rule (the "NBCO Rule" or the "Rule").[2] The NBCO Rule always has rested primarily on the conjecture that common ownership of newspaper and broadcast properties will diminish the diversity of media voices in local communities. No hard evidence has ever demonstrated that the NBCO Rule actually achieves this "hoped for" gain in diversity. Cox offers these reply comments to contribute additional data to a record that will demonstrate that the NBCO Rule is unnecessary to ensure diversity and competition in local media markets and affirmatively impairs the production of high-quality local service. Given this Commission's commitment to formulating policy based on hard data and real-world facts, as well as the very real public interest costs created by the NBCO Rule's

[1] *See* 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Notice of Inquiry*, MB Docket No. 09-182, DA 10-92 (rel. May 25, 2010) (the "*NOI*"); *see also* Media Bureau Announces Comment Deadlines for Notice of Inquiry in Media Ownership Proceeding, *Public Notice*, MB Docket No. 09-182, DA 10-1066 (rel. June 11, 2010).

[2] 47 C.F.R. § 73.3555(d).

negative impact on localism, the NBCO Rule can no longer be retained based on mere "hoped for" gains in diversity.

The comments in this proceeding and the record built up over the past 12 years overwhelmingly demonstrate that the NBCO Rule is not necessary to sustain the unprecedented and increasing levels of competition and diversity in local media markets. Moreover, the NBCO Rule actively impairs the Commission's policy of promoting localism by interfering with the efficient production and distribution of local news, which is newspapers' and local broadcasters' most vital public service. With its competition and diversity goals met, the Commission's main focus in this proceeding should be on fostering localism and clearing away regulatory obstacles to the production of high-quality local, professional journalism in communities large and small across the country. To accomplish that end, the Commission should move swiftly to repeal the NBCO Rule.

I. INTRODUCTION.

Cox is one of the nation's leading multi-platform media companies, with daily and weekly newspapers in Georgia, Ohio, Florida, and Texas; 15 television stations in 11 markets; 86 radio stations in 19 metropolitan areas; over 100 local Internet websites; and the third largest cable entertainment and broadband services operation in the United States, providing video, voice and data service to more than six million customers.[3] Cox was founded in 1898 when James M. Cox (later a two-term Governor of Ohio and Democratic Party Presidential nominee), purchased a struggling newspaper and rechristened it the *Dayton Daily News*. Cox transformed the paper into the crusading "People's Paper," dedicated to bringing local residents hard news

[3] Cox's newspaper, television, and radio properties are operated by its subsidiary Cox Media Group, Inc. Cox's cable television entertainment and broadband properties are operated by Cox Communications, Inc.

and performing its watchdog role for the Dayton community. Governor Cox once wrote that in operating his businesses "[t]he public interest must always be paramount." Throughout its 112 years of growth, Cox has maintained this singular focus on serving the unique needs of its individual communities and has committed itself to being a leader in local news and public service.

Cox has owned newspaper/broadcast combinations for more than 75 years in Dayton and for more than 70 years in Atlanta.[4] As a company with extensive experience with the public interest benefits that cross-ownership can provide, Cox has advocated repeal of the NBCO Rule in the Commission's five previous proceedings since 1998 that have evaluated the continued need for the Rule.

In this sixth proceeding to consider the Rule in the past 12 years, the comments again demonstrate unprecedented and growing competition and customer choice in local media markets. Today, local media consumers have more information and entertainment choices than ever before. In addition to newspaper, radio, and television outlets, consumers now enjoy access to cable, satellite, and mobile television, satellite radio, low-power television and radio, and, most importantly, the Internet. Today's robustly competitive and vibrantly diverse local media markets confirm that the Commission's interests in promoting competition and diversity have been well met. Neither of those policies can support retention of the NBCO Rule.

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[4] Cox's Dayton and Atlanta newspaper/broadcast combinations were grandfathered when the Commission adopted the NBCO Rule in 1975. *Multiple Ownership of Standard, FM & Television Broad. Stations,* Second Report and Order, 50 F.C.C.2d 1046, 1085 (1975) ("*1975 Order*"), *aff'd FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775 (1978) ("*NCCB*"). Certain of Cox's media combinations in Dayton and Atlanta are subject to pending waiver requests. *See 2006 Quadrennial Regulatory Review – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996,* Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, ¶78 n.257 ("*2008 Order*"), *appeal pending sub nom., Prometheus Radio Project v. FCC,* Nos. 08-3078, et al. (3d Cir. Filed July 15, 2008).

Accordingly, the Commission's main focus should be on determining whether retention of the NBCO Rule serves the Commission's policy of promoting localism. In particular, the Commission should examine the impact of the rule on the production and distribution of local news and information, which is a critical part of the localism equation. Such an analysis will demonstrate beyond a doubt that the NBCO Rule is affirmatively harming, rather than promoting, the Commission's goal of localism.

Producing high-quality local news has long been an expensive undertaking. The required investments are becoming harder and harder to make, moreover, due to the fragmentation of audiences and advertising revenues created by the influx of new competitors into local media marketplaces. In the absence of the NBCO Rule, local media companies could help recoup these audience and revenue losses by realizing the efficiencies of cooperation and cross-ownership. As long as the NBCO Rule remains in place, however, that competitive response may be foreclosed, and local media companies forced to curtail or discontinue local news operations. This danger is not theoretical – it is happening today.

To address this grave threat to local news production and distribution, the FCC's principal focus should be on promoting localism and clearing away the main regulatory obstacle to the production of high-quality local, professional journalism in communities large and small across the country. That requires repeal of the NBCO Rule.

II. REMOVING THE OUTMODED NBCO RULE WILL LEAD TO THE MOST EFFECTIVE LOCAL SERVICE TO THE PUBLIC.

A. Innovation and Competition Breed Higher-Quality Service to the Public.

Cox supports repeal of the NBCO Rule because it firmly believes that innovation and competition – not outmoded regulations – will lead to the highest quality public service for consumers in local media markets. The *NOI* and the comments in this proceeding recognize the presence of literally countless new media voices and technologies in each local market.[5] And while there may still be some debate over how to quantify the impact of the Internet, no one seriously disputes that it has irrevocably altered the way that consumers access news and information and how they spend leisure time that was once dedicated to traditional media like broadcast television and radio.[6] The record further reflects that new and diverse competitors are challenging traditional media for both audience and advertising revenue, squeezing the bottom lines of companies like Cox at a time when the poor health of the overall economy makes any revenue loss all the more painful.[7]

But Cox is not going to complain about new competition – it is going to meet it. All of this increased diversity and competition is good for consumers, and Cox welcomes it. Cox's own history shows that competition and innovation force companies to adapt and serve their communities better – a virtuous cycle that first led Cox from its roots in the newspaper business to local broadcasting, then to explore cable television, and most recently to introduce digital telephone, Internet services and its own Internet content.[8] Cox has always sought to remain on the cutting edge of technological innovation because it believes that is, in part, where the battle to win and retain customers is fought.

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5 *See NOI* ¶ 5; Comments of Tribune Company, Debtor-in-Possession at 16-58.

6 *See, e.g.*, Pew Research Center for the People & the Press, *Internet Overtakes Newspapers As News Outlet* (Dec. 23, 2008), *available at* http://people-press.org/reports/pdf/479.pdf; *see also* Pew Internet & American Life Project, *Understanding the Participatory News Consumer* (Mar. 1, 2010), available at http://www.pewinternet.org/~/media//Files/Reports/2010/PIP_Understanding_the_Participatory_News_Consumer.pdf (describing news ways that consumers are obtaining and interacting with news outlets and content).

7 *See NOI* ¶ 5.

8 As the next frontier of providing innovative services customers want, Cox is now launching wireless voice and data services to add mobility to its service bundle.

Indeed, Cox's media companies historically have taken the lead when it comes to new technologies. Cox's first cross-ownership began in 1935, when it signed WHIO(AM) onto the air, becoming the first radio broadcaster in Dayton. When Cox acquired the *Atlanta Journal* (now the *Atlanta Journal-Constitution*) in 1939, it also obtained WSB(AM). As the South's first radio station, WSB had been on the air since 1922. Nine years later in 1948, Cox brought WSB-TV to Atlanta, becoming the first television broadcaster south of Richmond, Virginia. Less than a year later, Cox again was first on the air, this time back in Dayton, when WHIO-TV debuted in February 1949. All of these developments occurred during radio and television's infancy, when the Commission affirmatively encouraged cross-ownership to ensure that the fledgling technologies would have a strong partner that could help them survive and thrive.

More recently, Cox was a leader in the DTV transition, and has now outfitted all of its local television news stations with HDTV news production equipment to ensure that viewers receive the highest-quality news video. Today, Cox is working with other broadcasters to introduce a Mobile DTV product to meet the competitive pressures being applied by wireless broadband devices like the iPhone and the iPad, which already support broadband video and also offer numerous applications that compete for Cox's audience's time and attention. Cox is a charter member of the Open Mobile Video Coalition, which has worked hand-in-hand with broadcasters and manufacturers to support the development of an effective, workable Mobile DTV standard. Cox's Vice President of Technical Operations chaired the Technical Advisory Group that developed the standard and worked with the ATSC to shepherd it through the process of gaining industry acceptance. To pave a commercial path for large-scale introduction of Mobile DTV to the public, Cox has joined with other broadcasters to form Pearl Mobile DTV Co., LLC, and Mobile Content Venture, both of which are intended to facilitate content generation, raising capital, and securing distribution. Today, five of Cox's own stations already are transmitting Mobile DTV feeds over-the-air to their local audiences. Cox is excited about the future prospects of Mobile DTV and expects that local television stations will use this new technology to maintain their historic and important local service role in future local media markets where mobility will be increasingly prized.

Of course, providing Cox's audience with superior service is not simply about high-tech solutions. Cox's success has also been grounded in its strong focus on constantly measuring -- and meeting – changing customer demands. For example, when the growth of television finally began to break down the preeminence of radio, Cox's radio stations refocused their efforts on determining what listeners wanted and providing it. As one of the heads of Cox Broadcasting from the era later described it: "Rather than being driven to the wall by television, radio got off its podium, dropped its pomposity and put on its roller skates. It became mobile and started rolling around the country, mingling with citizens, collecting and reflecting reactions and opinions."

Today, Cox's media companies continue to take a common sense approach to determining what its customers want and need: It asks them. Local companies like Cox are best equipped to determine the wants and needs of consumers in local markets and they have the strongest incentive to determine and deliver the content consumers want. The Commission should be confident that the on-the-ground efforts of companies like Cox are the best way to determine, on a market-by-market basis, how the needs of consumers can best be met.

In Cox's case, Cox Media Group employs a fully staffed department dedicated to performing in-depth market studies to determine whether Cox media outlets are meeting their goal of providing high-quality service on the customers' terms. Indeed, despite the current difficult business environment, Cox continues to invest resources in polling its local audiences regularly to identify what they do and don't want from their local media. Cox properties also follow up on the research they've conducted, measuring how well the company has met its consumers' needs. In today's hyper-competitive marketplace, the only way to retain customers is to serve their wants and needs and Cox strives to do just that.

For example, in response to an in-depth study of reader preferences, Cox's *Palm Beach Post* recently reformatted the paper's layout to make high-demand content more accessible and user-friendly. In the following months, readership and circulation improved. Cox also learned from its Palm Beach study that readers have a keen interest in crime stories, but more particularly, that they have an interest in stories that have a direct impact on their personal safety. So, readers prefer to be informed of stories about local violent criminal activity (such as gang activity or violence in schools) than stories about less threatening criminal activity (like minor offenses by the family members of local public officials). More recent Palm Beach audience research indicates a strong interest in news about the local effects of the oil spill in the Gulf of Mexico. Cox is in the process of conducting similar audience studies for each of its daily newspaper properties.

Cox also conducts research for its television stations to determine whether those properties are devoting sufficient resources to the stories and topics that readers and viewers want to read about and see. Each of Cox's studies is customized for the individual Cox property seeking insight into its audience's needs. Rather than seeking to recycle research across platforms or markets, Cox conducts separate audience research studies for the *Atlanta Journal Constitution* and for WSB-TV in Atlanta, for example. And, Cox works with its local properties individually to tailor its studies to local market conditions. Cox's market survey material for television station WPXI focuses on determining issues of local concern in the Pittsburgh market, and differs substantially from market research tools used in Palm Beach or Atlanta. While such research is no substitute for the independent editorial judgment that all Cox's properties exercise, it is an extremely useful guide for local media properties that are striving to serve an evolving audience.

In short, Cox's experience mirrors that of many other media companies participating in this and earlier proceedings on the NBCO Rule. Competition in the media marketplace has never been more intense. And it is that competition, not government rules and regulations, that is spurring traditional media companies to embrace technological innovations and to increase their efforts to accurately assess customer needs and interests – all to the benefit of the local communities they serve.

B. To Manage Expenses and Meet Emerging Competition to Cox's Local News Services, Cox Is Utilizing Cross-Platform Cooperation.

Cox's roots in the newspaper business are reflected in its ongoing commitment to being a news leader in all of its markets. Cox media properties are dedicated to providing the best possible news product to the largest possible audience. The superior service offered by Cox's daily newspapers repeatedly has been recognized, with Cox journalists garnering 23 Pulitzer Prizes since 1927. Cox television stations typically are news leaders in their markets, with its major network-affiliated stations producing an average of over 30 hours of local news every week on their primary channels. Many Cox stations lead in ratings as well, with top ranked newscasts in Atlanta, Dayton, Charlotte, and Orlando. And, Cox's television newscasts regularly are recognized for their high quality by local and national organizations.[9] Cox's radio stations

[9] A few recent examples include a Peabody award for KTVU(TV)'s (Cox's San Francisco station) coverage of the tragic 2009 shooting of commuter Oscar Grant by a San Francisco Bay

also maintain a local focus, operating news and talk stations in six of Cox's 19 radio markets. These stations provide an average of roughly 20 hours of news programming a week. Like their TV counterparts, these stations are highly rated – five of Cox's six news-formatted stations are the top rated news station in their market, and three rank in their market's "top two" stations overall.

But the modern production and distribution of news is an extremely expensive undertaking. Cox's local news operations typically provide both daily news stories and longer investigative pieces as well. Cox's day-to-day newsgathering expenses are substantial. All of Cox's local television news stations now produce their newscasts in high-definition, and most of them have invested in state-of-the-art weather monitoring and reporting equipment. And while Cox's newspapers have implemented a variety of creative strategies to handle the costs of printing and distributing daily newspapers, there are certain fixed costs that will always remain.

In-depth and investigative reporting requires a special commitment of resources. Investigative pieces may take a team of reporters days, weeks or months of work before a single story is published or aired. Top-notch investigative journalists can command salaries up to 50% higher than daily beat reporters. The investigative unit at WSB-TV produces roughly 24 in-depth stories a year with a budget of over $1 million — a huge expenditure for a relatively small number of stories. And even in a much smaller market such as Dayton, Cox media properties spend $20 million a year gathering the news, and have roughly 250 employees devoted to content generation.

Area Rapid Transit officer, and a second consecutive National Headliner award for Best Newscast won by Cox's Seattle station, KIRO-TV.

Historically, Cox's local news operations have been a high investment/high reward proposition. Cox has maintained its focus on serving the unique needs of its individual communities and has committed itself to being a leader in local news and public service. Consumers get the news they want and need, while Cox maintains a reliable, high value brand in each of its local markets.

Of course, even a stable, 112-year-old news company like Cox has not been immune to the upheavals in the local media business and the overall economy over the past few years. New competition and the Great Recession have driven down revenues while news gathering costs have remained high. Indeed, entire lines of business like classified advertising now generate a fraction of the revenue they once did. Cox has responded to these challenges by seeking new revenue streams – today more than 100 Cox employees work on digital media, and all of Cox's local properties maintain their own Internet websites that use a variety of social networking and other new technologies to enrich their user experience. And unlike many newspaper companies Cox has managed to recapture some lost classified advertising through its ownership of AutoTrader.com, the premier Internet site for purchasing new and used cars.

Nonetheless, like the rest of the industry, Cox's media properties also have had to rethink how they approach and staff newsgathering and distribution. That analysis has in turn led to sometimes significant cost-cutting and painful layoffs. But it also has led to a number of fundamental changes that Cox believes will improve not only its newsgathering efficiency, but also its overall news product.

First, Cox has sought to downsize its staff in a way that maximizes retention of the local reporters and sales staff who produce the high-quality news that is Cox's hallmark. Next, nearly a year ago, Cox conducted an internal reorganization, creating Cox Media Group, a new division that houses all of Cox's non-cable media properties, including its newspapers, radio and television stations, TV ad rep firms, direct mail operations, and local websites. This was a "silo-busting" move designed to get Cox's media executives working together to successfully guide Cox's media properties into the new and uncertain media future.

Moreover, at the local level, Cox has begun experimenting with cross-platform cooperation among its news properties. This process is most advanced in Dayton, where Cox Media Group Ohio is investing over $13 million to move all its print and broadcast operations into a single news center. Collocated operations will help Cox realize administrative efficiencies (such as decreased overhead costs) that increasingly are the key to modern, efficient local news operations. Moreover, senior staff has been reorganized to eliminate redundancy – now one senior executive oversees operations, sales, marketing, and digital strategy (respectively) for all Cox's media properties, whereas previously each property performed these functions on its own. Likewise, Cox's news and content operations in Dayton are now overseen by a single Cox Media Group leader. That executive is specifically tasked with looking for ways to enhance the properties' news coverage of the Dayton community while promoting a diversity of opinions and voices among Cox's properties, and protecting their independent editorial voice and identity.

These efforts to promote collaboration among Cox's Dayton newspaper, television, and radio stations are designed to provide better news by leveraging the expertise of Cox's print and broadcast reporters across all its Dayton media outlets. Cox expects that this strategy will provide consumers with higher quality news on all of its platforms. Cox also expects that this strategy will pay particular dividends in the areas of breaking news and investigative features. By pooling their efforts, Cox's Dayton properties will be able to deliver news to their audiences more quickly by improving Cox reporters' ability to fully cover breaking news across the Dayton market. Greater cooperation will also ensure greater depth in reporting – each property will gain the experience and skill of the other's reporters – and ensure that reporting resources are sensibly deployed. In some – perhaps many – cases, the editorial judgment of the cooperating properties will diverge and they will each devote resources to covering stories their own way. But in other cases, cooperation will eliminate the additional effort required to cover each story twice. The result, naturally, will be that more stories will receive coverage and that each story will be covered in greater detail.

Collaboration has enhanced all three of Cox's Dayton properties' ability to quickly report breaking news. A recent dramatic example of this enhanced news coverage capability occurred in April 2010, when a small airplane crashed near Dayton, killing a father and his daughter. Cox newspaper, television, and radio reporters were deployed and were able to share tips and information regarding the victims of the tragedy to make certain that each outlet was getting the story right. In addition, all three outlets relied on background research conducted using the expertise and resources of the *Dayton Daily News*. The result of this collaboration was broader, deeper, and faster coverage for all three outlets. WHIO-TV and WHIO Radio aired bulletins regarding the crash, and all three properties had stories concerning the crash on their websites within a few hours of the event.

Another representative example of the benefits of the increased collaboration in Dayton was the unprecedented coverage of Ohio's May primary elections provided by WHIO-TV, WHIO Radio, and the *Dayton Daily News*. This coverage was anchored from the newspaper's newsroom, and all three of Cox's Dayton properties contributed to the coverage, including News Center 7's James Brown, Cheryl McHenry and Letitia Perry, along with Radio News Director Jim Barrett, and *Dayton Daily News* Editor Ellen Belcher and reporters Bill Hershey and Scott

Elliott. The on-air television team was backed by a full staff of newspaper, TV and radio reporters, who conducted approximately 24 interviews with electoral candidates and experts on issues, school levies, and the offices at stake. The Dayton news directors also interviewed experts on state government and the Ohio education system, who provided consumers with the information they needed to assess the different candidates and issues.

The coverage aired on WHIO-TV during the prime time hours from 7 PM to 11 PM on a digital multicast channel. The primary coverage was watched by approximately 10,000 households, which equates to a two percent share in the market (comparable to CNN's viewership in the same time period), demonstrating the appeal of content that hews closely to local interests. Local live radio coverage on WHIO Radio began at 5 PM, reaching the Dayton audience listening on their evening commutes, and it aired through midnight, preempting the radio station's usual syndicated programming. The radio station reporting benefited greatly from the collaboration with WHIO-TV and the *Dayton Daily News*; for example, experts brought in for the television interviews also provided radio interviews, as the radio anchors reported on minute-by-minute changes in the polls.

Another recent example of cross-platform cooperation in Dayton involved Cox's coverage of the record snow storms that hit the area hard this February. As road conditions worsened and accidents clogged area highways, Cox's Dayton properties worked together to provide breaking updates across all media. For example, a Cox TV reporter and a Cox newspaper photographer were first to the scene of one major accident, and together they provided news updates and pictures for Cox's television and radio stations, as well as Cox's local websites. Cox's ability to quickly share resources and content across multiple media in this fashion provided Dayton residents with vital and timely local information on the platform of each consumer's choice.

Greater collaboration also is enabling Cox to better serve the Dayton community through non-news efforts as well. In October, Cox Media Ohio worked with local organizations to conduct fundraising activities in support of Dayton's Breast Cancer Awareness Month. Cox Media Group donated to the American Cancer Society a portion of the proceeds from the sale of its daily newspapers on October 17, which were specially printed in pink newsprint to help raise awareness about the fundraising effort. WHIO-TV promoted the fundraiser with PSAs and local news coverage, and one of its reporters served as master of ceremonies for the "Making Strides Against Breast Cancer" walk. WHIO Radio also contributed to the cross-platform campaign by producing a 30-minute feature on Breast Cancer Awareness Month and by running spots throughout the week about the pink paper fundraising campaign. Prior to Cox's involvement, there had been discussion of canceling some fundraising events. Instead, with Cox's support, the campaign raised a total of $375,000 from 6,500 participants.

While collaborative efforts are most advanced in Dayton, they are happening in other Cox markets as well. Notably, during unusually heavy and dangerous rain storms in Atlanta in September 2009, Cox's media properties worked together to distribute to the public weather forecasts, flood warnings, road closures, and other news regarding fatalities and storm damage. Cox's Orlando television station WFTV and its news/talk radio station WDBO(AM) in Orlando also collaborate during weather emergencies. When severe weather hits, WFTV's meteorologists can be made available immediately to WDBO to provide the radio station's listeners with in-depth, up-to-the-minute information that they otherwise would not have. In severe weather emergencies, WDBO's access to WFTV's meteorologists makes the radio station's listeners safer.

Cox's Orlando radio and television stations also have teamed up to jointly cover breaking news. For example, WFTV and WDBO worked together to cover a November 2009 story in which a disgruntled worker went to his former employer's office and started shooting at employees, killing one and injuring five. The emergency response to this crisis led to highway closures and other delays throughout the area for much of the day. Reporters from both WFTV and WDBO cooperated at the scene to produce the stations' joint coverage. Because WFTV had a live production truck and helicopter at the scene, the stations working cooperatively were able to provide WDBO listeners with much more in-depth coverage of the shooting than WDBO would have been able to provide on its own. In fact, WDBO simulcast the audio portion of WFTV's coverage of the shooting to bring detailed coverage of this breaking news to its listeners. This simulcast coverage was invaluable to listeners who were stuck on closed highways and who needed to travel through the area.

To ensure continued cooperation between the newsgathering departments of WFTV and WDBO, the stations have outfitted all reporters for the radio station carry "flip cameras" to shoot video of breaking news. This video can be uploaded to the station's website and shared with the television station. In addition, WFTV provides local news updates to WDBO every Saturday and Sunday. This is free local news content that WDBO otherwise would not have had. And, the stations make reporters available to one another for on-air appearances. Recently, a WFTV reporter was covering the story of a missing child and appeared on WDBO to provide further reporting the morning after his story aired on WFTV's evening news.

C. The Commission's Rules Must Not Foreclose Cooperative News Gathering Provided By Broadcast and Newspaper Properties.

Cox believes that increased collaboration among its crossed-owned properties is a win-win proposition for the company, its advertisers and, most importantly, its local audiences. Cox's properties are able to leverage their common ownership to create back-office efficiencies and help save administrative costs while harnessing the unique talents of each medium to provide a deeper, richer news experience to Cox's local communities. As described above, securing such efficiencies in the provision of local news and information is essential – particularly for newspapers – in today's challenging economic and competitive environment. Cox will continue to seek these opportunities for all its local traditional media properties.

A pro-competitive, pro-consumer regulatory framework should applaud these developments and encourage such cooperation among both cross-owned and independently-owned properties. Moreover, such a framework should permit independently-owned traditional media properties to combine to create the dynamic synergies that Cox has described. Traditional media participants in today's diverse and competitive local media marketplace should not be hamstrung by a rule designed to address outdated concerns about the monopolization of markets by broadcasters and newspaper companies. Today, the idea that those properties could exert such influence is, simply stated, laughable, and the NBCO Rule accordingly should be jettisoned.

III. THE NBCO RULE IS NOT NECESSARY TO FOSTER COMPETITION OR DIVERSITY AND IT AFFIRMATIVELY HARMS LOCALISM.

Section 202(h) of the Telecommunications act of 1996, as amended, directs the Commission to dispense with rules that are inconsistent with the pro-competitive pro-consumer approach Cox advocates. Under Section 202(h), the Commission is required to discard rules that are not "necessary in the public interest as the result of competition."[10] The NBCO Rule surely fits that description.

In past periodic media ownership reviews, the Commission has established that its media ownership rules will be removed or amended unless they are necessary for promoting competition, diversity, or localism.[11] The tortured history of the Commission's consideration of the NBCO Rule has been exhaustively recounted in several of the opening comments in this latest NOI, and need not be repeated here.[12] The current cross-ownership ban, with very modest waiver standards adopted in the *2008 Order*, is now in effect, but remains under appeal at the Third Circuit. Regardless of how the courts resolve those challenges, however, the record before the Commission today requires full repeal of the rule. As demonstrated below and in the initial comments, there is no basis for concluding that the NBCO Rule is necessary to foster competition, diversity, or localism in local media markets.[13] In the absence of such evidence, the Commission must act swiftly to repeal the NBCO Rule and free broadcasters and newspapers to compete as freely as its new media competitors do.

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[10] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 119 Stat. 56, 111-12 (1996) ("1996 Act"); Consolidated Appropriations Act of 2004, PUB. L. No. 108-199, § 629, 118 Stat. 3 (2004) (amending Section 202(h) of the 1996 Act).

[11] *See 2008 Order*, 23 FCC Rcd 2010, ¶9. For purposes of this analysis, "competition" refers to product market competition, as opposed to audience competition, which is considered under the diversity prong of the Commission's test.

[12] *See* Comments of Tribune Co. at 4-11; Comments of A. H. Belo at 3-8; Comments of Media General Inc. at 4-10.

[13] In its 2003 and 2008 Orders, the Commission determined that the NBCO Rule is not necessary to foster competition. *2002 Biennial Regulatory Review – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996: Cross- Ownership of Broad. Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broad. Stations in Local Markets,* Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 13,620, 13,749 (2003) ("*2003 Order*"), *aff'd in part, remanded in part, Prometheus Radio Project v. FCC,* 373 F.3d 372 (3d Cir. 2004) ("*Prometheus*"), *cert. denied*, 545 U.S. 1123 (2005); *2008 Order*, 23 FCC Rcd at 2,032 n.131. Given the ever expanding number of voices in local media markets, competition should not be an issue in this proceeding.

A. The Commission's Unsubstantiated Concerns About Diminished Diversity Cannot Justify the NBCO Rule.

The Commission reinstated the NBCO Rule in 2008 after having repealed it in 2003 because (1) it was concerned that combined ownership of traditional media properties might influence the content that those properties provide in a way that diminishes viewpoint diversity; and (2) it claimed it could not "quantify nontraditional media outlets' contribution to diversity."[14] The Commission's first justification for retaining the rule in 2008 is an echo of the same Commission justification offered in 1975: that the rule is based on a "hoped-for" gain in diversity.[15] This Commission's laudable focus on developing data-driven policies is inconsistent with permitting rules based solely on "hoped-for" diversity gains that haven't been demonstrated through actual evidence. Moreover, the diversity the Commission "hoped for" in 1975 already has arrived, and in such vast quantities that precise quantification is not necessary to recognize it.

A recent decision from the United States Court of Appeals for the Second Circuit perfectly sums up the differences between today's media market and the one that prevailed around the same time the NBCO Rule was adopted:[16]

> [In 1978] broadcast television undoubtedly possessed a "uniquely pervasive presence in the lives of all Americans."[17] The same cannot be said today. The past thirty years has seen an explosion of media sources, and broadcast television has become only one voice in the chorus. Cable television is almost as pervasive as broadcast – almost 87 percent of households subscribe to a cable or satellite service – and most viewers can alternate between broadcast and non-broadcast channels with a click of their

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14 *2008 Order*, 24 FCC Rcd 2010, at ¶ 49.

15 *See NCCB*, 436 U.S. at 786.

16 *Fox Television Stations, Inc., et al. v. FCC*, Nos., 06-1760-ag, 06-2750-ag, 06-5358-ag, slip op. at 15 (2d Cir. July 13, 2010) (describing changes since *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), was decided by the U.S. Supreme Court, three years after the NBCO Rule was adopted).

17 *Id.* (citing *Pacifica*, 438 U.S. at 748 (1978)).

> remote control.[18] The [I]nternet, too, has become omnipresent, offering access to everything from viral videos to feature films and, yes, even broadcast television programs.[19] As the FCC itself acknowledges, "[c]hildren today live in a media environment that is dramatically different from the one in which their parents and grandparents grew up decades ago."[20]

What the Second Circuit said about television broadcasting is equally true for radio stations and newspapers; they are merely single voices in a large and growing "chorus." Even if newspaper/broadcast combinations might have had a negative impact on diversity in 1975 (a concern that admittedly was not supported by any record evidence at the time), it does not follow that the same concern can justify the rule today. And the Second Circuit's observations also are reflected in the comments the Commission already has received in response to this *NOI*.[21]

1. *Cox's Experience in Its Cross-Owned Markets Confirms that the NBCO Rule Is Not Necessary to Foster Diversity*

Indeed, Cox's experience in its own cross-ownership markets confirms that the NBCO Rule is unnecessary to foster diversity. Cox has operated cross-owned newspaper and radio properties in Dayton since 1935 (with the television station signing on in 1949) and in Atlanta since 1939 (with the television station signing on in 1948). But Cox's cross-ownership of multiple media properties in the same market did not stop other newspapers or radio and television stations from succeeding in those communities. Today, Atlanta is the 8th largest DMA in the country, with over 140 traditional media voices owned by more than 70 different

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[18] *Id.* (citing *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 24 FCC Rcd 542, at ¶ 8 (2009)).

[19] *Id.* (citing *Implementation of the Child Safe Viewing Act; Examination of Parental Control Technologies for Video or Audio Programming*, 24 FCC Rcd 11,413, at ¶ 126 (2009) ("The number of suppliers of online video and audio is almost limitless.")).

[20] *Id.* (citing *Empowering Parents and Protecting Children in an Evolving Media Landscape*, 24 FCC Rcd 13,171, at ¶11 (2009)).

[21] *See, e.g.*, Comments of Tribune Company, Debtor-in-Possession, at 18-68; Comments of A.H. Belo at 13-16; Comments of Media General at 12-16; Comments of the National association of Broadcasters at 10-22.

companies. Although Dayton is a smaller market, it too is served by a robust array of some 70 traditional media outlets with more than 30 independent owners.

Nor have Cox's cross-ownership interests in Atlanta or Dayton inhibited other diverse voices from serving the market. Both Atlanta and Dayton now feature just as diverse and extensive a lineup of media voices as is available in non cross-owned markets, including cable operators, satellite video and radio providers, low power television and radio providers, and, most significantly, the Internet. Cox's cross-ownership has not kept Atlanta from becoming the 8th most-wired city in America (according to *Forbes* magazine).[22] And it hasn't suppressed residential broadband penetration in Dayton or Atlanta, which Cox estimates is in line with national averages reported to the Commission.[23] Nor has it stopped cable and DBS penetration, which together stand at 93.6% in Atlanta and 85% in Dayton as of May 2010.[24]

Most decisively, the Internet has multiplied exponentially the number of voices and viewpoints available to media consumers in local markets. Although the *2008 Order* indicated the Commission's concern that it could not "quantify" the impact of the Internet on diversity in

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22 *See* Elizabeth Woyko, "America's Most Wired Cities," Forbes.com (Mar. 3, 2010) *at* http://www.forbes.com/2010/03/02/broadband-wifitelecom-technology-cio-network-wiredcities.html. People who lack broadband connectivity at home have increasing opportunities to access those resources in public schools and libraries across the country. As the Commission has noted, 97% of public schools have access to the Internet and 94% of instructional rooms have Internet access of some kind. FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN at 252(2009), *available at* http://www.broadband.gov/plan/. Data before the Commission also show that significant numbers of Americans who lack access to broadband at home use it at work or in public libraries. *See* John B. Horrigan, *Broadband Adoption and Use in America,* Omnibus Broadband Initiative Working Paper Series No. 1 (Feb. 2010) ("OBI Working Paper No. 1"), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf. The National Broadband Plan (at 254) recommends prioritizing universal service funding to ensure that schools and libraries continue expand broadband access the public.

23 OBI Working Paper No. 1 at 3 (finding that 67% of Americans homes have broadband connectivity at home).

24 *See* Research Central, Market Track: Cable and ADS Penetration by DMA, May 2010, *available at* http://www.tvb.org/nav/build_frameset.aspx.

local markets, the relevant question for diversity purposes is whether the Internet creates a platform that is being used by diverse voices to communicate with local audiences. Plainly it is; any consumer in any local media outlet now has access to literally countless sources from every conceivable viewpoint on every conceivable topic.[25] Cox's Dayton and Atlanta markets, like all markets across the country, have a thriving online community, populated with myriad local, national, and international voices. These new online competitors have irrevocably changed local media markets by creating an unprecedented challenge to the audience and ad revenues that historically were garnered by traditional broadcast and newspaper media.

The evidence shows that diversity is thriving in Cox's Atlanta and Dayton newspaper/broadcast cross-ownership markets. These are two of the oldest cross-ownership markets in the country and they have featured cross-ownership since radio and television stations signed onto the air. The fact that cross-ownership has not diminished diversity in these two markets – where cross-ownership has had the most time to show its effects – provides strong support for the conclusion that the NBCO Rule is not necessary to preserve or promote diversity.

2. *Empirical Evidence Demonstrates that Cross-Owned Media Properties Do Not Compromise Viewpoint Diversity.*

Even setting aside the evidence of diverse voices in Cox and other cross-owned markets, the Commission's concern that permitting newspaper/broadcast cross-ownership would diminish viewpoint diversity is unsupported by any empirical evidence. A recent study by Professor David Pritchard, University of Wisconsin-Milwaukee Professor of Journalism and Mass

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[25] This in not a question of whether each new Internet voices is gaining the same audience as traditional media outlets. The Commission may seek to foster a diversity of voices, but the Commission has no authority to make rules based on its perception of whether the various speakers who have gained access to local markets are successful enough at obtaining an audience. Surely the First Amendment prohibits the Commission from discounting local media voices that have access to the entire market from the diversity analysis merely because those voices have yet to – or many never – find a large audience.

Communication, tested the hypothesis that "ownership of media properties influence the viewpoints those properties express" by examining the 2004 Presidential election coverage of cross-owned newspaper, television, and news/talk radio combinations in Chicago, Dayton, and Milwaukee.[26]

The study compared the apparent "slant" of news stories covering the 2004 Presidential election by cross-owned properties in the subject cities. In Milwaukee and Dayton, the study found that each of the cross-owned properties articulated different, individual viewpoints. In Milwaukee, for example, the newspaper and television provided balanced coverage that weakly favored Democrat John Kerry, respectively, while the radio station expressed a significantly greater pro-Bush sentiment.[27] Cox's Dayton combination similarly showed no unanimity in its coverage of the campaign, with the *Dayton Daily News* coverage showing a mildly pro-Kerry bent, WHIO-TV weakly preferring Bush, while WHIO-AM demonstrated a more decidedly pro-Bush position.[28] And in Chicago, the study concluded that "[a]ll three [cross-owned] media outlets provided balanced coverage of the campaign rather than the coordinated, strongly partisan slant that the one owner, one voice premise presumes."[29]

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[26] *See* David Pritchard, *et al.*, *One Owner, One Voice? Testing a Central Premise of the Newspaper-Broadcast Cross-Ownership Policy*, 13 COMM. L. & POL'Y 1 (2008) (the "Pritchard Study").

[27] *See id.* at 21

[28] *See id.*

[29] *See id.* This study confirmed results obtained in a previous study conducted by Dr. Pritchard for the FCC during its 2002 Biennial Media Ownership Review. *See* David Pritchard, Media Ownership Working Group Study No. 2, *Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (Sept. 2002). The Commission rejected Dr. Pritchard's results as probative of the diversity issue because that study did not include a control group to provide a baseline for comparing the results for the cross-owned properties. *2003 Order*, 18 FCC Rcd at 13629-30. As demonstrated below, Dr. Pritchard's current study utilizes a control group for a baseline comparison and the results are the same.

The study also compared the cross-owned properties in Chicago to a control group of non-cross-owned competitors in that market. The comparison showed approximately the same editorial slant as the cross-owned properties. The study thus concluded that "it was difficult, if not impossible, to distinguish between cross-owned and similar non-cross-owned media properties merely by looking at the slant of their coverage of the presidential campaign."[30]

The Prichard Study also provided a survey of the empirical research into the "one-owner, one-voice" premise underlying the Commission's concerns about viewpoint diversity and concluded that "[i]n general, studies that have directly tested the one-owner, one-voice premise have failed to find support for it in the context of newspaper-broadcast cross-ownership."[31] While acknowledging that media owners have the "theoretical power" to control the viewpoints expressed by media outlets, the Pritchard Study concluded that "there is no evidence that owners of mainstream media outlets – those that cater to broad, ideologically diverse audiences – systematically use their theoretical power to slant the news."[32] In other words, the Commission's past concerns that cross-ownership will impair diversity are entirely unfounded in any evidence.

This Commission has rejected the practice of adopting rules without a sound foundation in the available data. Given the explosion of new voices in local media markets, including Cox's cross-owned markets in Atlanta and Dayton, and the lack of any evidence that common ownership leads to a decrease in viewpoint diversity, the Commission can not rely on diversity concerns to sustain the NBCO Rule.

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30 *Id.* at 22.

31 *Id.* at 16.

32 *Id.* at 24.

B. Furthering the Commission's Localism Policy Requires Repeal of the NBCO Rule.

Like its competition rationale, the Commission found in 2003 and affirmed in 2008 that cross-ownership promotes localism by offering cross-owned properties the efficiencies of scale necessary to increase news operations.[33] In fact, in the *2003 Order*, the Commission actually found that the NBCO rule "is not necessary to promote broadcasters' provision of local news and information programming and . . . the rule actually works to inhibit such programming."[34] The Commission's finding that cross-ownership promotes localism was upheld by the Third Circuit in its review of the *2003 Order*. And, in 2008, the Commission reaffirmed that "cross-ownership can promote localism by increasing the amount of news and information transmitted by the co-owned outlets."[35] Nothing has changed in the past two years that would suggest any change to this finding could be supported.

Indeed, just the opposite is true. The new emerging economics of local media markets brought about by the explosion of diversity and audience competition mean that the Commission can no longer take for granted the production of news by traditional local media outlets. The production and distribution of local news and information is extremely expensive under the best of circumstances. And as new competitors soak up an increasingly large share of audience attention and local advertising revenues, the funds that local media properties have traditionally used to invest in local news will increasingly disappear.

Cox knows the costs of remaining committed to professional journalism in modern media markets. Given its track record and branding as the news leader in its markets, Cox's news investment is worth it. And consumers in Cox markets gain the value of superior local news

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33 *See 2003 Order*, 18 FCC Rcd at 13,753-60; *2008 Order*, 23 FCC Rcd at 2038.

34 *2003 Order*, 18 FCC Rcd at 13,753-60.

35 *2008 Order*, 23 FCC Rcd at 2038.

service. This high investment/high reward model may have worked well in the past, but in an era of high costs and diminishing revenues, the Commission must closely consider whether in the future this model will support acceptable levels of local news production in all or even in most markets.

In fact, the Commission should be concerned about whether the current high investment/high reward model will even remain feasible for historically reliable local news producers like Cox. Accelerating competition in local media markets will only make it more difficult for all traditional media companies to invest in local news and professional journalism going forward. The fragmentation of audience and advertising revenue that has accompanied this new competition has significantly diminished revenues for traditional media.

While these challenges have been further compounded by the stubborn "Great Recession," the *NOI* correctly acknowledged that these changes are occurring in all local media markets and are permanent and ongoing.[36] Indeed, entire lines of business – such as the classified ads that used to be the mainstay of local newspapers – have been overtaken by new competitors. The growing market share captured by the new competition has led some market analysts to conclude that newspaper and radio advertising revenue may stabilize at only 60% of their 2006 levels even after the economy fully recovers.[37]

Local Internet traffic data provides a good example of why traditional media can no longer expect to earn the same level of revenue in a local media world increasingly dominated by new competitors. This data clearly demonstrates that Internet companies are actively vying for local consumers' attention – and advertising dollars. Nielsen's NetView reports for Atlanta and

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[36] *NOI*, ¶¶ 5-11.

[37] Pew Project for Excellence in Journalism, State of the Media 2010, http://www.stateofthemedia.org/2010/overview_intro.php (March 2010).

Dayton, for example, show that Cox's traditional media properties have a much more limited reach than the companies that are currently dominating the web. For example, in May 2010 in Atlanta, Google and Yahoo! each reached more than four times the number of unique users as the website for the *Atlanta Journal-Constitution*, which was accessed by only 16.6% of unique users. Indeed, Yahoo! News reached nearly 10% more unique Internet users than the *Atlanta Journal-Constitution*'s website. Even all websites for Cox's Atlanta media properties combined reached less than one quarter of the Atlanta Internet community. Likewise, in Dayton, Google and Yahoo! reached nearly four times the number of unique Internet users reached by the *Dayton Daily News*, which reached only about 18% of users, and all Cox's Dayton media websites combined reached only about a quarter of Dayton's online community.

Traditional media's inability to command the audiences it once did also are reflected in declining ratings and circulation data. All this decreased reach has and will continue to translate into lower shares of local advertising revenues. The revenues that broadcasters and newspaper companies are now losing to new competitors are the same revenues that once were used to fund the very expensive process of local news reporting and distribution. As revenues and profits disappear, the news operations of local media companies are increasingly at risk. And, because some of the new competitors are national in scope and focus, they are not equipped to fill the void that would be left if local broadcasters and newspaper companies are no longer able to fund high quality, professional news operations.

The Commission already has begun to see the results of this process in the form of newspaper failures and broadcast bankruptcies. When big city dailies like the *Seattle Post-Intelligencer* and the *Rocky Mountain News*, with their long and proud histories of serving local communities, cannot continue in business, it is a clear sign that traditional media properties have lost whatever power they might have had to dominate markets or stifle diversity.

For these reasons, the Commission must consider carefully whether traditional media owners in markets of any size will be able to continue bearing the costs of producing and distributing local news for much longer in an environment where increased competition continues to diminish revenues. The Commission's current NBCO Rule waiver standards presume that newspaper/broadcast combinations are appropriate only in the largest markets.[38] Traditional media outlets in smaller markets, however, also are vulnerable to competition from satellite providers and the Internet, which are national in scope and can eat into local media revenues without the expense of local operations. The reality is that traditional media companies are grappling with new competition in every local market and there is no reason to allow only traditional media and audiences in larger markets to realize the benefits of increased quantity and quality of local news that cross-ownership arrangements have been shown to provide.

Fulfillment of the Commission's localism policy requires that the Commission seek to create a climate where consumers in every market can expect that local media companies will provide high-quality local news. This looming crisis in local news production requires Commission action. To maintain traditional media's ability to continue producing high quality, professional journalism at the local level, the Commission must create a regulatory environment that allows local media properties to maximize their investment in local news by encouraging them to produce as much news content as they can in the most efficient way possible.

The Commission's prior findings, the comments in this proceeding, and Cox's experience show that cooperative newsgathering by cross-owned products can help make the investment in

[38] 47 C.F.R. § 73.3555(d)(3).

local news more feasible, thereby helping to preserve local newsgathering operations. In this proceeding, the Commission should encourage stations in markets of all sizes to pool resources through cross-ownership or shared services agreements and other arrangements that increase the amount of local news being produced in the market. Accordingly, preserving the Commission's localism policy thus affirmatively requires that the NBCO Rule be repealed.

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The Commission's responsibility to safeguard localism, and, specifically, to ensure that local media companies continue to have the opportunity to provide high quality, local news and information to communities across America, outweighs any concerns the Commission may have about repeal of the NBCO Rule. This 35-year old rule cannot be justified and now works affirmative harm on local traditional media properties and their readers, viewers, and listeners. Accordingly, the Commission should repeal the NBCO Rule.

IV. CONCLUSION.

For the foregoing reasons, Cox requests that the Commission (1) find pursuant to Section 202(h) of the Telecommunications Act of 1996 that the NBCO Rule is "no longer necessary in the public interest as the result of competition" and (2) repeal the NBCO Rule in its entirety.

Respectfully submitted,

COX ENTERPRISES, INC.

/s/

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